IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

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S.B. Civil Revision Petition No. 115/2007

Nanak Das

Versus

New Pinkcity Grah Nirman Sahakari Samiti Ltd. & Ors.

Date of order :: August 10, 2007

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. R.K. Daga for the appellant
Mr. R.K. Agarwal for the respondents

BY THE COURT:

1. This revision petition is directed against the order dated 11.07.2007 whereby the learned Additional District Judge No. 2, Jaipur City, Jaipur has dismissed the Civil Misc. Appeal No. 10/2007 and affirmed the order dated 19.01.2007 passed by the Additional Civil Judge (Jr. Division) East, Jaipur City, Jaipur, whereby he has referred the dispute to the Arbitrator in accordance with Section 8(1) of the Arbitration and Conciliation

Act, 1996 (for short 'the Act'). The petitioner being aggrieved of the said order submits that he was not a party to the agreement and therefore, he is not bound by the same and the matter should have been tried by the learned trial court.

2. This submission is opposed by the learned counsel for the respondents Mr. Agarwal relying on the decision of the Hon'ble Supreme Court in the case of *Agri Gold Exims Ltd. Vs. Sri Lakshmi Knits and Wovens and Others* reported in (2007) 3 SCC 686, wherein the Hon'ble Supreme Court held that provisions of Section 8 of the Act are peremptory in nature and where arbitration agreement exists, court obliged to refer the parties to arbitration. Learned counsel for the respondents has further relied upon a judgment by the Hon'ble Supreme Court in the case of *Olympus superstructures Pvt. Ltd. Vs. Meena Vijay Khetan and Others* reported in (1999) 5 SCC 651, wherein the Hon'ble Supreme Court has further dealt with the said controversy and held that Section 34(2)(b)(i) does not prohibit reference to arbitration of issues relating to specific performance and right to specific performance on an agreement for sale deals with

contractual rights and so it is open to the parties to agree to refer the issues relating to specific performance to arbitration. Learned counsel for the respondents further states that since the father of the present appellant Panchu and his two other brothers agreed to sell the property under agreement to sale to the respondents containing the arbitration clause, therefore, in accordance with Section 8(1) of the Act, the learned trial court has rightly referred the matter to the Arbitrator.

3. Learned counsel for the respondents further contends that this would be so in view of the Section 40 of the Arbitration Act, which says that arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or as respects any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

4. Learned counsel for the appellant Mr. Daga has placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Sandeep Kumar and Others Vs. Master Ritesh and Others*

reported in **2006 (8) Supreme 575** and the judgment by the learned Single Judge of this court in ***Mahesh Kumar Vs. Rajasthan State Road Transport Corporation, Jodhpur*** reported in **AIR 2006 Rajasthan 56**.

5. Having perused the judgments cited at the bar, this court is of the opinion the the learned trial court has not committed any error in referring the dispute to the Arbitrator in terms of Section 8(1) of the Act. The petitioner Nanak Ram is however free to raise all the just objections before the learned Arbitrator who is bound to decide the dispute in accordance with the law and the Arbitration agreement.

6. With these observations, this revision petition is disposed of.

(Dr.VINEET KOTHARI),J.

Pramod
Item No. 35